

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

WAFFLE HOUSE, INC.,

Plaintiff,

v.

**NATIONAL LABOR RELATIONS BOARD, a
federal administrative agency, JENNIFER
ABRUZZO, in her official capacity as the General
Counsel of the National Labor Relations Board,
LAUREN M. MCFERRAN, in her official capacity
as the Chairman of the National Labor Relations
Board, MARVIN E. KAPLAN, GWYNNE A.
WILCOX, and DAVID M. PROUTY in their official
capacities as Board Members of the National Labor
Relations Board, and JANE DOE in his official
capacity as an Administrative Law Judge of the
National Labor Relations Board,**

Defendants.

Case No. 3:24-cv-06751-MGL

**CONSENT MOTION FOR AN EXTENSION OF TIME
TO FILE RESPONSE TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Pursuant to Local Rule 6.01, Defendants, the National Labor Relations Board, *et al.* (collectively "Defendants")¹ respectfully file this Consent Motion requesting that the Court issue an order extending the due date for Defendants to file their response to Plaintiff Waffle House, Inc.'s ("Waffle House") Motion for Preliminary Injunction (ECF 14) by fourteen days, and additionally extending the due date for Waffle House to file a reply to Defendants' response by seven days. The reasons for this Motion are as follows.

¹ All Defendants in this case are official-capacity Defendants, and thus the real party in interest is their employing agency. Unless specifically noted, all papers in this case filed by Defendants are filed on behalf of all Defendants.

1. On November 21, 2024, Waffle House filed its Complaint against Defendants (ECF 1) alleging violations of the United States Constitution in that NLRB administrative law judges and Board members are unconstitutionally insulated from removal by the President and that the NLRB proceeding against it violates its Seventh Amendment rights and its due process rights under the Fifth Amendment. On November 22, 2024, Waffle House filed a Motion for Preliminary Injunction (ECF 14) seeking to enjoin the NLRB from conducting the proceeding that is currently scheduled to go to a hearing before an NLRB administrative law judge on February 11, 2025.

2. As to the Motion for Preliminary Injunction, the current due date for Defendants' response is December 6, 2024. In addition to the Thanksgiving holiday, Defendants' counsel are currently handling multiple other active litigations, including other motions for preliminary injunctive relief, which have created time-sensitive obligations. These obligations unfortunately impede the ability to fully prepare Defendants' brief by the current due date of December 6, 2024. The requested fourteen-day extension would cause the new due date to be December 20, 2024. Counsel for Waffle House has consented to this extension.

3. As this extension would cause Waffle House's reply to be due the week of Christmas, the parties respectfully ask the Court to extend the due date for Waffle House's reply by seven days, making the new reply due date January 3, 2025. Neither deadline has previously been extended.

4. While the requested extension would not affect other pre-set deadlines in this matter as no scheduling order has been set in this case, the parties discussed that the administrative hearing that Waffle House seeks to enjoin in this case is scheduled to begin on February 11, 2025. *See* ECF 14 at 4, ECF 14-6 at 8. The parties are cognizant of the Court's schedule and believe that the due date sought herein can facilitate full briefing by the parties, any oral argument before the Court,

and a decision by the Court on Waffle House's motion for a preliminary injunction, to occur before the February 11, 2025 hearing date.

5. For these reasons, the Board respectfully requests that the Court enter an order granting Defendant's request for a fourteen-day extension of time to file a response to Plaintiff's motion for a preliminary injunction and, accordingly, setting a new response deadline of December 20, 2024. Defendants further request that the Court grant a corresponding extension of time for Waffle House to file its reply, thus setting a new reply deadline of January 3, 2025.

Respectfully submitted,

ADAIR F. BOROUGHS
UNITED STATES ATTORNEY

By: s/Todd Timmons
Todd Timmons (#11254)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803) 237-9265
Email: Todd.Timmons@usdoj.gov

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Local Counsel for Defendants

National Labor Relations Board
Contempt, Compliance, and
Special Litigation Branch
1015 Half St. SE
Washington, DC 20003
Fax: (202) 273-4244

Christine Flack
Supervisory Attorney
(*Pro hac vice* forthcoming)
(No official bar number in Maryland)
Telephone: (202) 273-2842
christine.flack@nrlrb.gov; ccslb@nrlrb.gov